

SWRQB Reg Text Proposal for Group 1 (Goal/Intent section) of T/I Rules

Prepared by Gaylon Lee, May 14, 2008

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Prepared by Gavlon Lee, May 14, 2008

Article 6 Watercourse and Lake Protection

916, 936, 956 Intent of Watercourse and Lake Protection [All Districts]

The purpose of this article is to ensure that timber operations do not threaten to cause significant site-specific and cumulative impacts to the beneficial uses of water, native aquatic and riparian species, and the beneficial functions of riparian zones, or threaten to cause violation of any applicable legal requirements.

Deleted: are protected from potentially significant adverse site-specific and cumulative impacts associated with timber operations

Explanatory Note 1 (not reg text):

- a. *The only substantive change is at the end of the sentence.*
- b. *Porter-Cologne subjects discharges that COULD affect the State's waters to Water Board regulation (CWC 13260(a)(1)).*
- c. *It directs other State agencies to comply with State Water Board-approved water quality control plans (CWC 13247).*
- d. *It also directs other State agencies to comply with State Water Board-adopted water quality control Policies (CWC 13146), including:*
 - 1) *RESOLUTION NO. 88-63: SOURCES OF DRINKING WATER POLICY and*
 - 2) *RESOLUTION NO. 68-16: POLICY WITH RESPECT TO MAINTAINING HIGH QUALITY OF WATERS IN CALIFORNIA.*
- e. *The latter Policy must be applied in a manner consistent with the federal antidegradation policy (40 CFR 131.12).*
- f. *The Water Board standards of review and environmental goals under the antidegradation policies and CWA 303(d) are more rigorous and less flexible than CEQA's "no significant avoidable impact" standard.*

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It is the intent of the Board to restore, enhance, and maintain the productivity of timberlands while providing consideration for the beneficial uses of water that is appropriately scaled to their condition.

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Explanatory Note (not reg text): See Item (c) and Note 3 below.

Further, it is the intent of the Board to clarify and assign responsibility for recognition of potential and existing impacts of timber operations on watercourses and lakes, native aquatic and riparian-associated species, and the beneficial functions of riparian zones and to ensure adoption of feasible measures to

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effectively achieve compliance with this article. Further, it is the intent of the Board that the evaluations that are made, and the measures that are taken or prescribed, be documented in a manner that clearly and accurately represents those existing conditions and those measures. "Evaluations made" pertain to the assessment of the conditions of the physical form, water quality, and biological characteristics of watercourses and lakes, including cumulative impacts affecting the beneficial uses of water on both the area of planned logging operations and in the Watershed Assessment Area (WAA). "Measures taken" pertain to the procedures used or prescribed for the restoration, enhancement, and maintenance of the beneficial uses of water.

All provisions of this article shall be applied in a manner, which complies with the following:

(a) During and following timber operations, the beneficial uses of water, native aquatic and riparian-associated species, and the beneficial functions of riparian zones shall be maintained where they are in good condition, protected where they are threatened, and insofar as feasible, restored where they are impaired.

Explanatory Note 2 (not reg text)::

- a. This intent section is not intended to deal only with waters that are not 303(d)-listed, but to provide broad statewide guidance for all situations (including those with impairment).
- b. Need to somehow clarify that here "feasible" should not be read per 895.1. It should be taken to mean "to the degree that timber operations alone can contribute". Timber operations should be accountable for actively contributing toward restoration, not to achieving it all by themselves (except where timber production is the only land use in a watershed).

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(b) Maintenance, protection, and restoration of the quality and beneficial uses of water during the planning, review, and conduct of timber operations shall comply with all applicable legal requirements including those set forth in any applicable water quality control plan or water quality control Policy (See Note 1.d. above) adopted or approved by the State Water Resources Control Board. At a minimum, the LTO shall not do either of the following during timber operations:

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(1) Place, discharge, or dispose of or deposit in such a manner as to permit to pass into the waters of the state, any substances or materials, including, but not limited to, soil, silt, bark, slash, sawdust, or

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petroleum, in quantities deleterious to fish, wildlife, beneficial functions of riparian zones, or the quality and beneficial uses of water;

(2) Remove water, trees or large woody debris from a watercourse or lake, the adjacent riparian area, or the adjacent flood plain in quantities deleterious to fish, wildlife, beneficial functions of riparian zones, or the quality and beneficial uses of water.

(c) Where native aquatic and riparian-associated species, the beneficial functions of riparian zones and the quality and beneficial uses of water are currently in good condition, maintaining that condition shall be given equal consideration as a management objective within any prescribed WLPZ and within any ELZ or EEZ designated for watercourse or lake protection. Where they are threatened or exceptionally valuable, protecting their current condition shall likewise be given equal or greater consideration as a management objective. Where they are currently impaired, active contribution toward their recovery shall be given greater consideration than timber production as a management objective.

Deleted: Protecting and restoring

Explanatory Note 3 (not reg text): These policy statements reflect an approach to balancing mandates for water quality and timber production.

- a. Per Note 1 above, the first sentence addresses compliance with the State and federal antidegradation policies.
- b. The second sentence sets forth a policy reflecting the “first protect the best” (or most critical) habitat (e.g., thermal refugia) as well as USEPA-designated Outstanding National Resource Waters.
- c. The third sentence addresses compliance with CWA 303(d) restoration objectives.

(d) The measures set forth in this Section are meant to enforce the public's historical and legal interest in protection for wildlife, fish, and water quality and are to be used to guide timberland owners in meeting their legal responsibilities to protect public trust resources.

916.1, 936.1, 956.1 In Lieu Practices [All Districts]

In rule sections where provision is made for site specific practices to be proposed by the RPF, approved

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by the Director and included in the THP in lieu of a stated rule, the RPF shall reference the standard rule, shall explain and describe each proposed practice, how it differs from the standard practice, and the specific locations where it shall be applied; and shall explain and justify how the protection provided by the proposed practice is at least equal to the protection provided by standard rule.

Explanatory Note 4 (not reg text): There could be two different levels of explanation and justification for nonstandard practices:

- a. A minimal level for those nonstandard practices which will actually provide better protection (or better comply with applicable legal requirements) than the standard practice, and**
- b. A more rigorous level for those that are less protective or arguably could cause violation of applicable legal requirements.**

(a) The in lieu practice(s) must provide for the maintenance, protection and restoration of the beneficial uses of water in accordance with 14 CCR 916(c) above, or to the standards of 14 CCR 916.3 [936.3, 956.3] and 916.4(b) [936.4(b), 956.4(b)], whichever is greater.

(b) In lieu practices stated in an approved THP shall have the same enforceability and legal authority as those practices required by the standard rules.

(c) Any in lieu practices which propose less than standard rule WLPZ widths for Class I watercourses shall include 14 CCR 916.5.(e) [936.5(e), 956.5(e)] "A" & "D" protection measures.

916.2, 936.2, 956.2 Protection of the Beneficial Uses of Water and Riparian Functions [All Districts]

(a) The measures used to protect each watercourse and lake in a logging area shall be determined by the presence and condition of the following values:

(1) The existing and restorable quality and beneficial uses of water as specified by the applicable water quality control plan and as further identified and refined during preparation and review of the plan.

(2) The restorable uses of water for fisheries as identified by the DFG or as further identified and refined during preparation and review of the plan.

(3) Riparian habitat that provides for the biological needs of native aquatic and riparian-

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associated species as specified in 14 CCR 916.4(b) [936.4(b), 956.4(b)].

(4) Sensitive conditions near watercourses and lakes as specified in 14 CCR 916.4(a) [936.4(a), 956.4(a)].

The maintenance, protection, and restoration of these values shall be achieved through a combination of the rules and plan-specific mitigation. The RPF shall propose and the Director may require, adequate protection of overflow and changeable channels which are not contained within the channel zone.

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Deleted: protected from potentially significant adverse impacts from timber operations and restored to good condition, where needed,

Explanatory Note 5 (not reg text): May be affected by changes in "channel zone" definition: also see Note 1.f. above.

(b) The State's waters are grouped into four classes based on key beneficial uses. These classifications shall be used to determine the appropriate minimum protection measures to be applied during the conduct of timber operations. The basis for classification (characteristics and key beneficial uses) are set forth in 14 CCR 916.5 [936.5, 956.5], Table 1 and the range of minimum protective measures applicable to each class are contained in 14 CCR 916.3 [936.3, 956.3], 916.4 [936.4, 956.4], and 916.5 [936.5, 956.5].

(c) When the protective measures contained in 14 CCR 916.5 [936.5, 956.5] are not adequate to provide for maintenance, protection, or restoration of beneficial uses, feasible protective measures shall be developed by the RPF or proposed by the Director under the provisions of 14 CCR 916.6 [936.6, 956.6], Alternative Watercourse and Lake Protection, and incorporated in the plan when approved by the Director.

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Explanatory Note 6 (not reg text): Here the highest level of explanation and justification is required for practices intended to provide greater protection than do the standard practices; see Note 4 above.

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916. 1x, 936. 1x, 956. 1x Restoration in Watersheds with Impaired Beneficial Uses of Water [All Districts]

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In addition to all other district Forest Practice Rules, the following goals and objectives shall

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apply in any planning watershed in which timber operations can generate discharges that can exacerbate the effect of stressors or pollutants on downstream beneficial uses of water that are already impaired;

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Explanatory Note 7 (not reg text): These changes needed for consistency with scope of TMDL implementation plans.

(a) **GOAL** - Every timber operation shall be planned and conducted to actively contribute toward recovery of beneficial uses of water that are already impaired by stressors or pollutants whose deleterious effects could be exacerbated by discharges from timber operations. To achieve this goal, every timber operation shall be planned and conducted to:

Deleted: prevent deleterious interference with the watershed conditions that primarily limit the values set forth in 14 CCR 916.2 [936.2, 956.2](a) (e.g., sediment load increase where sediment is a primary limiting factor; thermal load increase where water temperature is a primary limiting factor; loss of instream large woody debris or recruitment potential where lack of this value is a primary limiting factor; substantial increase in peak flows or large flood frequency where peak flows or large flood frequency are primary limiting factors)

Deleted: meet the following objectives where they affect a primary limiting factor

Explanatory Note 8 (not reg text): The “limiting factors” approach belongs more to fisheries biologists. TMDLs and 303(d) think more in terms of “stressors” or “pollutants”. While the list includes the stressors most commonly associated with timber operations, there are a few situations where timber operations can contribute to other types of pollution (e.g., increased discharge of mercury-laden sediment).

(1) Comply with a management plan for one or more planning watersheds that has been collaboratively developed by the board, department, and the responsible regional water quality control board and which is either:

a. Designed, pursuant to 916.x1, to proactively prevent further impairment of beneficial uses of water in a water body (or segment thereof) which has not yet been listed pursuant to Section 303(d) of the federal Clean Water Act, but in which beneficial uses of water are declining toward the need for such a listing.

b. Designed, pursuant to 916.x2, to proactively contribute to recovery of impaired beneficial uses of water in a water body (or segment thereof) which has been listed pursuant to Section 303(d) of the federal Clean Water Act, but for which a Total Maximum Daily Load (TMDL) implementation plan has not yet been adopted.

Explanatory Note 9 (not reg text): The two parts of item (1) provide a way for BOF and the timber industry to “get ahead of the curve” of actions that a Regional Water Board may otherwise need to take, and to thereby retain more control over their own destiny. With adequate implementation of a collaborative watershed management plan, a Regional Water Board may find, in the first case, that 303(d) listing is not needed. This is consistent with the BOF intent to “enhance” beneficial uses

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of water (916). In the second case, the Regional Water Board may find that the plan fully satisfies the forest element of a TMDL implementation plan per State Water Board Resolution No. 2004-0063, Policy For Developing California's Clean Water Act Section 303(d) List. (Although not in this Policy, the USEPA Integrated Reporting Guidance "Category 4B" option allows an approved alternative restoration plan to preclude the need to develop a TMDL for 303(d)-listed waters. BOF could explore this option with the State Water Board.)

In either case, the proactive plan's prescriptions are likely to be less onerous than those that would be subsequently imposed by a Regional Water Board, and they would be more appropriately tailored at a watershed scale rather than a regional "one-size-fits-all" scale. If these proactive approaches are not taken, then Regional Water Boards will be compelled to specify what must be done in TMDL implementation plans (see the following item).

(2) Comply with the terms of a TMDL implementation plan that has been adopted by the responsible regional water quality control board to address factors that may be affected by timber operations.

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(3) Give the goal of restoring impaired beneficial uses of water and degraded beneficial functions of riparian zones higher consideration than the goal of maximizing timber production, especially in any WLPZ or in any EEZ or ELZ designated for protection of the quality and beneficial uses of water.

Explanatory Note 10 (not reg text): This policy is one way of balancing the resource management mandates of Water Boards and BOF. The reasoning is that those resources which are officially known to be suffering or are most critical (e.g., fire hazard reduction) deserve more consideration than those that are not. See Note 3 above.

(b) When assessing cumulative impacts of a proposed project pursuant to (a) (1) or (a) (2) above, the RPF shall assess the degree to which the proposed operations would result in impacts that may interact with existing stressors (including those from past natural events) to further impair a waterbody's beneficial uses. The RPF shall provide measures to actively contribute both to recovery of the beneficial uses of water and to attainment of water quality standards in the listed portion of the waterbody.

The Director's evaluation of such impacts and restoration measures will be done in consultation with the appropriate RWQCB.

Explanatory Note 11 (not reg text) Note 11: This has been adapted from 898, with the major change being the requirement to explicitly include effects of past natural events in the cumulative impacts

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analysis, not just effects of past projects per CEQA.

Explanatory Note 12 (not reg text) Note 12: The terms 303(d) and TMDL occur ONLY in 898, 916.9(a), 916.9.1(a), and 916.12, so putting them into one section is not difficult.

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